

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2382 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

AMARJITSING,ASST COLLECTOR

Versus

STATE OF GUJARAT

Appearance:

MR.M.M.TIRMIZI FOR MR VP THAKKER for Petitioners

MR.S.A.PANDYA,ADDL.PUBLIC PROSECUTOR for Respondent No. 1

UNSERVED AS EXPIRED for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/10/96

ORAL JUDGEMENT

The complainant Mahant Anandgauri Guru Umedgauri filed a criminal complaint in the Court of the learned Judicial Magistrate, First class, Junagadh on 14-5-85 against the petitioners who are Government officers for having committed offences punishable under sections 147, 148, 149, 166, 295, 427, 448, 451, 436 and 34 of the

Indian Penal Code by, inter alia, alleging that the petitioners, by taking law in their hands, entered into the property of the complainant and committed the offence of criminal trespass and damaged the property of the complainant, inspite of the order of the Civil Court to maintain status-quo.

On the aforesaid basis, the learned Magistrate ordered inquiry into the matter under section 202 of the Criminal Procedure Code. After the inquiry, it appears that the learned Magistrate found a prima facie case against the petitioners, issued process-summons against the petitioners under section 204 (1) (b) of the Criminal Procedure Code for offences punishable under sections 147, 148, 149, 166, 295, 427, 448, 451 and 436 of the IPC on 27-5-88. It appears that this inquiry case was registered as Criminal Case No.3070 of 1988 and during the pendency of the same, the learned Magistrate issued a non-bailable warrant against the petitioners on the ground that the offence punishable under section 436 of the IPC is triable by the Court of Sessions. The petitioners have, therefore, filed the present petition under section 482 of the Criminal Procedure Code for quashing the warrant issued by the learned Magistrate.

This Court (Coram : B.J.Shethna,J - as he then was) on 22-7-94 granted leave to join the original complainant Mahant Anandgiri Guru Umedgiri as party respondent No.2 and issued notice to him. It appears from the record that the original complainant has expired on 29-10-1990. The death certificate is on the record of the case. The learned Sessions Judge has also addressed a letter to the Registrar of this Court stating the said fact. In view of the fact that the complainant has expired, as per the provisions of section 256 (2) of the Criminal Procedure Code, the petitioner-accused are required to be acquitted. It is true that the discretion is vested with the Magistrate to proceed with the case in absence of the complainant. However, no useful purpose will be served in proceeding further with the case as all the petitioners are Government servants and have acted as per the directions issued by this Court in Civil Application No. 3623 of 1984 by inter alia observing that," there will be no ban by this Court on the Government taking action to avoid further encroachments". Since the petitioners have acted pursuant to the order of this Court as well as the order of the Government while performing their official duty, prima facie ,it appears that a valid sanction to prosecute under section 197 of the Criminal Procedure Code is required to be obtained before filing the prosecution which , in the present

case, has not been obtained. In view of the above, even if the option is provided for the Magistrate to proceed further with the case in absence of the complainant, I am of the opinion that this is a fit case to pass an order of acquittal on the ground that the complainant has died. In view of this finding, it would be futile to send the matter back to the learned Magistrate for passing appropriate order of acquittal and, therefore, the ends of justice will be met with if the said order is passed by this Court in this application.

In the result, this application is allowed. All the petitioner-accused are acquitted of the offences alleged in Criminal Case No.3070 of 1988 pending in the Court of the learned Chief Judicial Magistrate, Junagadh. Rule is made absolute accordingly with no order as to costs.

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